

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal No. 783-SB of 1998

Date of decision: 5th March, 2010

Kishan Chand

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. M.L. Saini, Advocate for the appellant.
Mr. Manish Deswal, Deputy Advocate General, Haryana
for the State.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

The Court of Additional Sessions Judge, Gurgaon tried Joginder Singh son of Ram Parshad, Kishan Chand and Satbir Singh sons of Gulab Singh as accused in case FIR No.18 dated 25.01.1994 registered at Police Station Bilaspur under Sections 308, 323, 34 IPC.

The trial Court, while acquitting Joginder Singh and Satbir Singh of the charge, has convicted the appellant Kishan Chand for offence under Section 325 IPC and sentenced him to undergo rigorous imprisonment for a period of 3 ½ years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for six months. It was further ordered that out of the amount of fine, Rs.3000/- shall be paid as compensation to the injured.

Mr.Bipan Ghai, Senior Advocate assisted by Mr.M.L. Saini, Advocate, appearing for the appellant, has out-rightly submitted that he will not be able to assail the conviction of the appellant, as the injured

Mukesh PW-6 had deposed against the appellant and his evidence has been held to be reliable by the trial Court. In his examination in-chief, Mukesh PW-6, had stated that on 6th December, 1993 at about 5.00 p.m. he was present in his house in village Pachagaon when he heard a noise outside the house. On hearing the noise, he along with his mother Ratni came out of the house and found that Joginder accused was beating his brother Narinder Singh. When he wanted to separate his brother, the accused appellant Kishan gave two lathi blows on his head, as a result of which he became unconscious. His mother took him to the house and therefrom, he was taken to Pushpanjli Hospital, Gurgaon. It is further stated in the examination in-chief that he remained in the Pushpanjli Hospital, Gurgaon from 6th December, 1993 to 8th December, 1993. In his cross examination, this witness stated that before the occurrence in question, neither there was any dispute nor any quarrel with the accused. Mukesh PW-6 had given his age as 16 years at the time of recording of his evidence.

The testimony of Mukesh PW-6 had been corroborated by his mother Ratni PW-8.

Dr.Ashwani Kumar, Medical Practitioner appeared as PW-7 and deposed that on 6th December, 1993 he was employed as a part-time consultant at Pushpanjli Hospital, Gurgaon. He had admitted Mukesh on 6th December, 1993 and discharged him on 7th December, 1993. At the time of discharge, Mukesh was fully conscious and his condition was stable. Mukesh was again examined on 10th December, 1993 by Dr.Rajeev Sharma PW-4. He found following injuries on the person of Mukesh:

1. Cut lacerated wound on left side parietal region 2 cm from the mid-line, size 2 cm x 1 cm.

2. Deep abrasion size 2 cm x 0.5 cm, two fingers below and posterior to injury No.1.

This witness in the cross examination stated that probability of both the injuries having been caused by one blow or by fall on hard surface cannot be ruled out.

Dr.Monika Chaudhary PW-5 stated that she had conducted radiological examination of Mukesh and found that there was a fracture of left parieto occipital bone.

Dr.Raj Kumar PW-14 stated that Mukesh was admitted in Ward No.5/3 with head injury. He was discharged on 20th December, 1993. There was a fracture of skull of left parieto occipital bone and it was a depressed fracture.

In view of the medical evidence noticed above, the learned counsel has prayed for reduction of sentence without assailing the conviction. From the medical evidence noticed above, it has emerged that the injured Mukesh had suffered two injuries. Injury No.2 was abrasion whereas injury No.1 had caused fracture of left parieto occipital bone. The injured was admitted on 6th December, 1993 in a private hospital and was discharged on 7th December, 1993. He was again admitted in Medical College and Hospital, Rohtak on 10th December, 1993 and was discharged on 20th December, 1993. It has nowhere emerged in the evidence that the injury had caused oedema of the brain or had caused any permanent damage to the injured Mukesh PW-6. Furthermore, the trial Court has found that the offence in the present case will not fall under Section 308 IPC but under Section 325 IPC.

Occurrence, in the present case, had taken place in the year 1993. A period of more than 16 years has already elapsed. The appellant is in the corridors of the Court since long and has suffered mental pain

and agony of a protracted trial. Taking all these factors into consideration, this Court is of the view that ends of justice will be fully met in case sentence awarded upon the appellant is reduced from 3 ½ years to 1 ½ years rigorous imprisonment.

With the modifications in sentence noticed above, present appeal is disposed of.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

March 5, 2010
rps